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Paper No. 13
GDH/HLJ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sport-Design, Inc.

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Serial No. 74/543,143

Myron Amer of Myron Amer, P.C. for Sport-Design, Inc.

Dominick J Salemi, Trademark Examining Attorney, Law Office 107 (Thomas Lamone, Managing Attorney).

Before Cissel, Quinn and Hohein, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Sport-Design, Inc. has filed an application to register the mark "STARS OF TOMORROW" for "children's sports products, namely, baseballs, baseball bats and gloves, tennis rackets, footballs, basketballs and soccer balls "[1]

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the

[1] Ser No 74/543,143, filed on June 27, 1994, which alleges a date of first use anywhere of May 6, 1994 and a date of first use in commerce of May 20, 1994

mark "STAR OF TOMORROW," which is registered for "golf clubs,"[2] as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Turning first to the respective marks, applicant contends that its "STARS OF TOMORROW" mark can be distinguished from registrant's "STARS OF TOMORROW" mark since "it gives a differing impression." Specifically, applicant asserts that:

> Applicant's mark, particularly when considered in conjunction with its children's athletic products, connotes budding athletes, tyros today but (hopefully) gifted players tomorrow. Registrant's mark, on the other hand, because of its singular nature, provides a less "colorful" meaning, more directed to the astronomical.

In addition, because "all" of the goods set forth in the application for registration "are used in team sports, as distinguished from [products for] use by an individual, such as 'golf clubs,'" applicant maintains that "the connotation of applicant's mark using the plural STARS, is different from that of the cited [registrant's] mark using the singular STAR".

We agree with the Examining Attorney, however, that the respective marks "are virtually identical" and that the sole difference therein--the plural "STARS" versus the singular "STAR"--is insufficient to distinguish such marks when considered in their entireties This is because, as a general proposition, there is no material difference, in a trademark sense, between

[2] Reg No 1,889,989, issued on April 18, 1995, which sets forth dates of first use of November 1, 1993

the singular and the plural form of a word. See Wilson v Delaunay, 245 F.2d 877, 114 USPQ 339, 341 (CCPA 1957). Such is plainly the case with the marks "STARS OF TOMORROW" and "STAR OF TOMORROW" since both create essentially the same commercial impression, as applied to sports equipment for use by children, of future athletic superiority or greatness.[3] In view thereof, and inasmuch as the average purchaser normally retains only a general rather than a specific impression of trademarks, see, e.g., Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106, 108 (TTAB 1975), confusion as to source or sponsorship is likely if such virtually identical marks were to be used in conjunction with the same or similar goods.

Turning, then, to the respective products at issue in this appeal, applicant insists that "while there may be manufacturers which produce both golf and other sporting equipment, there are also golf equipment manufacturers which produce only such a line." In particular, applicant notes that "[t]here is no evidence of record that registrant has any intent whatsoever to expand or, as a matter of law, that various sporting goods items are always deemed to be related." Applicant asserts, therefore, that the purchasing public would not view its children's sports products as an expansion of registrant's golf club line.

The Examining Attorney, on the other hand, correctly points out that the issue of likelihood of confusion must be

[3] To state the obvious, while "[a]ll of the recited products" in applicant's application may indeed be used in team sports, all of such items can also be used separately by individuals for play or practice.

determined on the basis of the goods as they are set forth in the involved application and cited registration, see, e.g., CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v Tomy Corp , 697 F.2d 1038, 216 F.2d 937, 940 (Fed. Cir 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973), and that registrant's "golf clubs" would necessarily include those for use by children. In view thereof, and citing such cases as In re New Archery Products Corp., 218 USPQ 670 (TTAB 1983); Trak Inc v. Traq Inc., 212 USPQ 846 (TTAB 1981); and A. G Spalding & Bros. Inc. v. Bancroft Racket Co., 149 USPQ 391 (TTAB 1966) for the proposition that the Board "has held that different products in the sporting goods field are related," the Examining Attorney urges that confusion is likely in this case.

We are constrained to concur with the Examining Attorney that applicant's children's sports products, namely, baseballs, baseball bats and gloves, tennis rackets, footballs, basketballs and soccer balls, are closely related to registrant's golf clubs, including those models designed for use by children. It is common knowledge that such sports equipment is sold in sporting goods stores and the sporting equipment sections of department stores and other mass merchandisers. Moreover, while some manufacturers of products like applicant's do not also produce golf clubs, applicant concedes that some sporting goods producers do make a full line of sports equipment In fact, we note that while, as stated in its reply brief, applicant "has discontinued the marketing of STARS OF TOMORROW ... golf

equipment," the application as originally filed included "golf equipment" for children in addition to the goods presently set forth. Clearly, children's golf clubs are closely related to such other everyday children's sports equipment as baseballs, baseball bats and gloves, tennis rackets, footballs, basketballs and soccer balls.

Accordingly, we conclude that consumers, familiar with registrant's "STAR OF TOMORROW" mark for golf clubs, including those sized for use by children, could reasonably believe, upon encountering applicant's virtually identical "STARS OF TOMORROW" mark for children's sports products, namely, baseballs, baseball bats and gloves, tennis rackets, footballs, basketballs and soccer balls, that such closely related products of registrant and applicant either constitute a single line of children's sports equipment or otherwise emanate from or are affiliated with the same source See A. G. Spalding & Bros. Inc. v. Bancroft Racket Co., supra at 394 [use of identical mark "EXECUTIVE" for golf clubs and tennis rackets is likely to cause confusion]

Decision: The refusal under Section 2(d) is affirmed.

R. F. Cissel

T. J. Quinn

G. D. Hohein
Administrative Trademark Judges,
Trademark Trial and Appeal Board

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